



Manta Viewing within the West Hawaii Ocean Recreation Management Area

Introduction of Proposed Administrative Rules

September 9, 2016



PHOTO BY JEFF MILISEN

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EXECUTIVE SUMMARY



PHOTO BY SAM KAHNG

The mission of the Division of Boating and Ocean Recreation (DOBOR) is to provide facilities, support ocean activities, and ensure public access to state waters. In response to community concerns and the ongoing popularity of manta ray night diving on the Kona coast, DOBOR is considering implementing Ocean Recreation Management Area (ORMA) regulations specific to the two most popular dive sites on Hawaii Island: Makako Bay (Garden Eel Cove) and the nearshore waters fronting Keauhou Bay.

Through administrative rules, DOBOR can regulate aspects such as: live boating, anchoring, rafting, designated commercial/recreational moorings, mooring permits for use of specific moorings at specific sites, time limits, lighting for snorkelers, kayaks, and other small vessels, subsurface lighting, and fees for commercial use of the dive sites.

This document outlines possible regulatory schemes for the manta dive sites that take into consideration the following principles:

- **Safety:** Provide best management practices to ensure human safety.
- **Environmental Integrity:** Minimize degradation to coral and marine life.
- **Sustainability:** Promote responsible ocean activity that conserves natural resources for future generations

The regulatory scheme will:

- Install additional moorings to prevent coral damage and facilitate safe use of the site.
- Limit user access to both sites to prevent overcrowding and strain on the resources.
- Regulate sources of user conflict and potential safety issues, including live boating, lighting, and vessel speed.
- Restrict manta SCUBA tours to the northern site (Makako Bay). The density of coral cover at Keauhou does not provide an area of sand or rubble that can be used to sit on the ocean floor without damaging coral.

Related to the proposed regulation, DOBOR will:

- Provide clear maps of the sites.
- Provide GPS locations of all permitted moorings on its website.

DOBOR invites your input and comment on this proposal before draft administrative rules are created. Areas where comments are solicited are in green italicized bold font. To be considered for the promulgation of draft administrative rules, comments are due October 14, 2016 via email (dlnr.harreview@hawaii.gov), fax (808-327-3675) or by mail to the Division of Boating and Ocean Recreation, 4 Sand Island Access Road, Honolulu, Hawaii 96819. Please include your name and a way to contact you. Comments from a source that cannot be identified may or may not be considered in the department's deliberations on the new rule or amended rule. Please use the subject line "Comments on Proposed Manta Rules."

TIMELINE

- 2012: Meetings with the US Coast Guard, Manta operators establish self-imposed manta ray dive sites guidelines
- 2014: Legislature passes House Concurrent Resolution "Urging the Department of Land and Natural Resources to Adopt Rules to Manage Manta Ray Dive Sites"
- 2015: Operator conversations, manta ray dive site safety assessment released, incident reporting training, input on issues and draft rule elements collected throughout the year.
- 2016: Benthic surveys of Makako Bay and Keauhou sites, mapped potential mooring layout, outreach to broader public, recreational users and cultural practitioners for input regarding usage of sites etc.
-
- 2016: Meetings to present draft rules (Sep, Nov)
- 2017: Public hearing (est. March/April), Board of Land and Natural Resources' approval (est. Aug)

PROPOSED GENERAL RULES AND RESTRICTIONS

The following rules and restrictions would be applicable to both sites and be written into administrative rule:

LIVE BOATING LIMITED TO INGRESS/EGRESS AND EMERGENCY SITUATIONS

Live boating means keeping a vessel in continuous operation, with its engines running. Live boating is required to reach moorings as well as to pick up drifting passengers if they cannot return to the vessel or in other emergency circumstances. Live boating while passengers are in the water solely because there is no mooring available presents a significant safety hazard by increasing the potential for boat/diver accidents. For this reason, DOBOR proposes restricting live boating to ingress and egress at a speed of slow-no-wake (approximately 5 nautical miles per hour), as well as under emergency conditions.

RAFTING/DAISY CHAINING PROHIBITED

“Rafting” or “Daisy Chaining” means tying up multiple boats to a single mooring. Generally, the first vessel ties up to the mooring and subsequent vessels tie up to the first vessel. Currently, this practice is heavily utilized at the sites due to an insufficient number of moorings to support all permitted operators. Rafting is problematic for several reasons including: additional stress on moorings, increased potential for user conflict, increased danger of a vessel/swimmer accident. Additionally, the US Army Corps of Engineers does not recommend allowing rafting due to the increased strain on moorings, which is difficult to quantify as it varies with the various combinations of vessel weights and sizes that can occur when rafting is allowed. For the foregoing reasons, DOBOR will prohibit rafting at any mooring at the two sites.

SUBSURFACE VESSEL LIGHTING PROHIBITED

Subsurface hull lighting is not a significant safety hazard to humans and may benefit individuals who cannot otherwise get in the water to interact with mantas, because the mantas will swim up close to the boats with plankton attracted to the hull lighting. The Department of Land and Natural Resources, Division of Aquatic Resources has suggested that bringing mantas closer to the vessel increases the likelihood of manta/vessel strikes as well as entanglement with moorings from proximity to the vessel. DOBOR has concluded that subsurface hull lighting will be prohibited in the draft rules.

LIGHTING FOR KAYAKS, SUP AND OTHER SMALL CRAFT REQUIRED

Regulating snorkeler/kayak/other small vessel lighting poses a problem because there is no guarantee of uniform application. Problems could arise due to requiring lighting only at manta dive sites and not statewide. A possible solution would be to address these lighting regulations in a broader general rule for nighttime ocean recreation. US Coast Guard navigation rules require small craft to have a white light on board to display. Manta sites are high traffic areas, and the sites can become a major safety hazard when people and small craft do not display a light. DOBOR will require these small vessels to display a light on board at all times.

ADDITIONAL MOORINGS PROVIDED

Additional moorings will prevent anchor damage from manta activities as well as other recreation. Coupled with the restriction of one boat per mooring (the no-rafting rule) the overall number of vessels able to utilize the site at any one time will dramatically decrease. Limitations to the amount and locations of day-use moorings include benthos, depth, and proximity to the shoreline.

The following are the proposed procedures for use of moorings at the two sites:

- Between 4:00 a.m. to 4:00 p.m., all moorings will be open to any user, commercial or recreational.
- Between 4:00 p.m. to 4:00 a.m., specific moorings will be reserved exclusively for recreational users and the remaining moorings will be for commercial activities. If the designated commercial moorings are restricted to one specific operator per mooring (and only one vessel moored at a time), then the commercial operator must use the mooring they are designated. Violation of any of these requirements could lead to suspension or revocation of any permits issued by DOBOR.

DOBOR is soliciting comments regarding the amount and locations of commercial manta moorings. See Appendices A and B for current proposals. Please submit your comments on or before October 14, 2016 via email (dlmr.harreview@hawaii.gov), fax (808-327-3675) or by mail to the Division of Boating and Ocean Recreation, 4 Sand Island Access Road, Honolulu, Hawaii 96819. Please include your name and a way to contact you. Comments from a source that cannot be identified may or may not be considered in the department's deliberations on the new rule or amended rule. Please use the subject line "Comments on Proposed Manta Rules."

NOTES:

- The number of moorings installed could vary based on vessel rating (e.g., more moorings using smaller boats).
- The number of moorings could be greater if the mooring zone were to be expanded (e.g., if mantas were reconditioned to new campfires).

SITE SPECIFIC RULES

While manta activities are conducted in a similar fashion at both the Keauhou site and Makako Bay, due to the location and benthic composition of each site, regulations will differ slightly between the two areas. The following are the site specific rules contemplated for each site:

KEAUHOU SHORE WATERS

Please see the appendices for maps of the proposed area within which the following restrictions could apply.

1. MANTA-RELATED SCUBA ACTIVITIES PROHIBITED

Keauhou will be designated a snorkel only site due to lack of a sandy area that would be conducive to the campfire method where divers sit on the bottom with their lights shining upwards into the water column. This practice has been determined by manta dive operators to be the safest way for customers to view manta rays without causing human/manta collisions or interrupting manta feeding patterns. Manta night SCUBA activities require divers to have access to a sandy or rubble area where they can sit on the bottom without damaging coral. Benthic surveys of the Keauhou site indicate that there is no such area that can be utilized without coral damage. This prohibition does not prevent snorkeling at the site at any time or SCUBA activities at the site during other daylight hours.

DOBOR is soliciting comments regarding whether there should be a campfire area designated for the Keauhou Site. Please submit your comments on or before October 14, 2016 via email (dlmr.harreview@hawaii.gov), fax (808-327-3675) or by mail to the Division of Boating and Ocean Recreation, 4 Sand Island Access Road, Honolulu, Hawaii 96819. Please include your name and a way to contact you. Comments from a source that cannot be identified may or may not be considered in the department's deliberations on the new rule or amended rule. Please use the subject line "Comments on Proposed Manta Rules."

2. LIMITED ISSUANCE OF COMMERCIAL PERMITS FOR SHORE-BASED MANTA ACTIVITIES

The Keauhou site is easily accessible from shore for commercial and recreational users. Kayak and SUP tours as well as shore-dive tours have been observed in the area. Shore based activities can contribute to the overcrowding of the site. Therefore, commercial permits issued for shore-based manta activities at the Keauhou site will be limited to the number of permits currently issued. No further permits will be issued at this time. Additionally, there are currently no plans to limit recreational access to the Keauhou site from shore.

MAKAKO BAY (GARDEN EEL COVE)

Please see the appendices for maps of the proposed area within which the following restrictions could apply.

1. MIXED TOURS WITH SNORKEL AND SCUBA WILL BE ALLOWED

Snorkel and SCUBA manta activities will be allowed at the Makako Bay site due to the existence of an established rubble area that facilitates the campfire method. The Campfire method is intended to create a situation where divers and snorkelers coordinate their lighting in order to create a central lighted area (campfire) of the water column within which mantas can feed without colliding with tour goers.

2. SCUBA TOURS LIMITED TO THE CAMPFIRE AREA

Manta SCUBA activities will be limited to the designated campfire area which will be clearly delineated in the administrative rules drafted for Makako Bay.

OPTIONS FOR MOORING PERMITS AND FEES

All operators hosting manta tours at Keauhou and Makako will be required to hold a manta-viewing permit. Each permitted vessel will be given a specific mooring to use during manta viewing hours. Permits will be reviewed annually and may be revoked in the event of non-compliance with day-mooring or manta viewing rules.

PERMITTEE SELECTION PROCESS

Only permitted commercial operators conducting manta tours as of June 2015 will be eligible to apply. Over the past year DOBOR worked with the operators to present several methods for selecting who would be issued a permit. It was agreed that since the activity is already crowded, there should be a cut-off point beyond which new commercial operators would not be considered eligible for a permit under any new permitting system for the Keauhou and Makako Bay sites. Additionally, in order to effectively manage the two sites, the department is not issuing any new commercial use permits for Manta tours at this time.

A draft list of operators that are eligible to apply can be found in Appendix C. **Please note that being on this list does not guarantee issuance of a permit.** If the department elects to issue annually renewed permits to tie to a specific mooring during manta hours, they will be offered only to those operators who pass the application process. Renewal will be contingent on compliance with all state, county, and federal laws, regulations, and rules, as well as timely payment of mooring fees.

DOBOR is currently soliciting comments regarding what qualifications should a manta operator possess in order to be eligible to apply for a Manta mooring permit if such permits are issued. Please submit your comments on or before October 14, 2016

via fax (808-327-3675) or the DOBOR website. Please use the subject line "Comments on Proposed Manta Rules."

If you believe you belong on the list of operators eligible to apply for a permit and are not included, please contact DOBOR on or before October 14, 2016 with the following information:

- Company Name
- Vessel Name
- Contact Information (Name, Address, Telephone Number, and email)
- Proof of Commercial Permit for State Ocean Waters from DOBOR
- Justification for being included on the list
 - How long you have been conducting manta tours
 - How often you conduct manta tours (weekly, daily, monthly, etc.)
 - 2 separate witness statements from other operators on the list of manta tour operators (with witness name and contact number).

INITIAL PERMIT ISSUANCE:

Operators listed in Appendix C will be offered the opportunity to apply for a permit based on criteria chosen by DOBOR. If an operator does not apply for a permit, then the opportunity will be offered to the next eligible applicant on the waitlist until all eligible operators have had a chance to apply. Under DOBOR rules, commercial permits are non-transferable (companies are transferable and permits may be transferred with the company but the permit alone cannot be sold outright).

Please Note: If a permitting method that limits issuance of permits is selected, not all operators currently in operation will receive a permit. Additionally:

- One permit per company
- Permit will be for access to one site only (Either Makako Bay or Sheraton Keauhou Shore waters)
- Operators issued a permit for Sheraton Keauhou Shore Waters will be limited to Manta Ray snorkel tours.

NEW PERMITTEES:

Under a scenario where administrative regulations limit manta tour operations by permit, there will also be opportunities for new permittees to obtain a permit. If for any reason a manta mooring permit is revoked or not renewed, the permit will be offered to the next eligible person on the waitlist. The draft rules will clearly outline waitlist procedures.

DISCARDED OPTIONS FOR MANTA MOORING PERMIT SELECTION PROCESSES

From previous discussions with stakeholders, the following permit issuance options were found to be impractical or unfavorable because they were either administratively difficult to implement or would not be economically feasible:

Lottery: Available permits would be randomly issued to the list of eligible operators (Appendix C). This method was unfavorable because it does not account for the number of years some operators have been in business.

Auction: Auctioning permits was not a popular choice because it allows the operators with the deepest pockets to obtain the permit. Additionally, DOBOR does not have statutory authority to auction commercial permits other than jet ski and parasail operations at this time.

First-Come-first-serve: DOBOR would announce a date and time at which it would accept applications for a Manta mooring permit and issue the permits to the first eligible applicants until all permits are issued. This method was too difficult to figure out administratively in terms of determining timing of applications etc., and does not favor operators already in business.

No Permit: DOBOR would not restrict access to the sites or require operators conducting manta tours to obtain a specific permit. Based on the safety study as well as community and operator sentiment and the rate at which new manta businesses are emerging, this is not a practicable alternative.

No Permit, Limit carrying capacity of the site: This is an option that does not require a Manta mooring permit but instead provides for installation of additional moorings subject to day use mooring rules. The division would make rules determining how many vessels are allowed in each site and that each vessel must use a mooring instead of anchoring. This option does not address a host of issues including enforcement, funding for installation, maintenance and upkeep of moorings as well as competitive use of the moorings. Additionally, it may not be a feasible model under which to operate a business because it is not guaranteed that a mooring will be available once an operator reaches the site with their customers.

PERMIT/MOORING FEE OPTIONS:

The exact fee for a manta mooring permit, if any, is to be determined. Fees will be calculated based on the cost for installation, maintenance and repair of moorings, administrative and enforcement costs.

1. NO FEE

If additional moorings are provided by the department this option is not feasible in the long run because the commercial moorings provided to operators are costly to install, repair and maintain.

2. FEE ADJUSTED TO ACCOUNT FOR VARYING VESSEL SIZES

This is the currently preferred option of the department. If the department installs moorings that are rated for various vessel sizes, it has been suggested that the fees for use of the mooring reflect how many passengers a vessel could host. Otherwise, operators conducting tours in 25' vessels will be paying the same fee as operators conducting tours in 75' vessels while the larger vessel is capable of deriving much greater economic benefit from a manta mooring permit.

The number of moorings available for a given area would initially be calculated based on the use of 25' vessels. Subsequently, whichever mooring scheme is ultimately selected, the fee would be based on how many 25' vessel moorings each mooring displaced.

Example: A mooring for a 75' vessel would displace 3 25' vessels, therefore the fee for that mooring would be 3 times the fee for a 25' mooring.

3. OTHER OPTIONS

Other options include charging a passenger fee that would go towards maintenance of the sites, charging a percentage of gross receipts, charging a flat fee based on vessel carrying capacity according to the US Coast Guard Certificate of Inspection (COI) and charging a flat fee for each mooring regardless of the vessel size or carrying capacity.

DOBOR is soliciting comments on fee options if permitted commercial moorings were to be installed. Please provide your comments on or before October 14, 2016 via fax (808-327-3675) or the DOBOR website. Please use the subject line "Comments on Proposed Manta Rules."

POTENTIAL MOORING NUMBER AND ARRANGEMENT

Currently both locations have approximately 5 to 8 moorings available. Some of these moorings are approved day use moorings and the status of other moorings cannot be verified by DOBOR. Administrative rules for the site will clearly demarcate the locations of approved moorings. Illegal moorings will be removed.

The following are proposed mooring numbers, both commercial and recreational:

Scenario 1:

Sheraton Keauhou Shore Waters: 12 commercial, 1 recreational (no campfire)

Makako Bay: 12 commercial, 1 recreational

Calculations based on a 1.5:1 scope (line from mooring to vessel is 1.5 times the water depth). General rule of thumb for permanent moorings is a 3:1 scope in order to withstand severe weather conditions (high surf and winds). In this case we do not anticipate use of the moorings in inclement conditions.

Scenario 2:

Sheraton Keauhou Shore Waters: 11 commercial, 1 recreational

Makako Bay: 11 commercial, 1 recreational

Calculations based on 2:1 scope (line from mooring to vessel is 2 times the water depth).

Scenario 3:

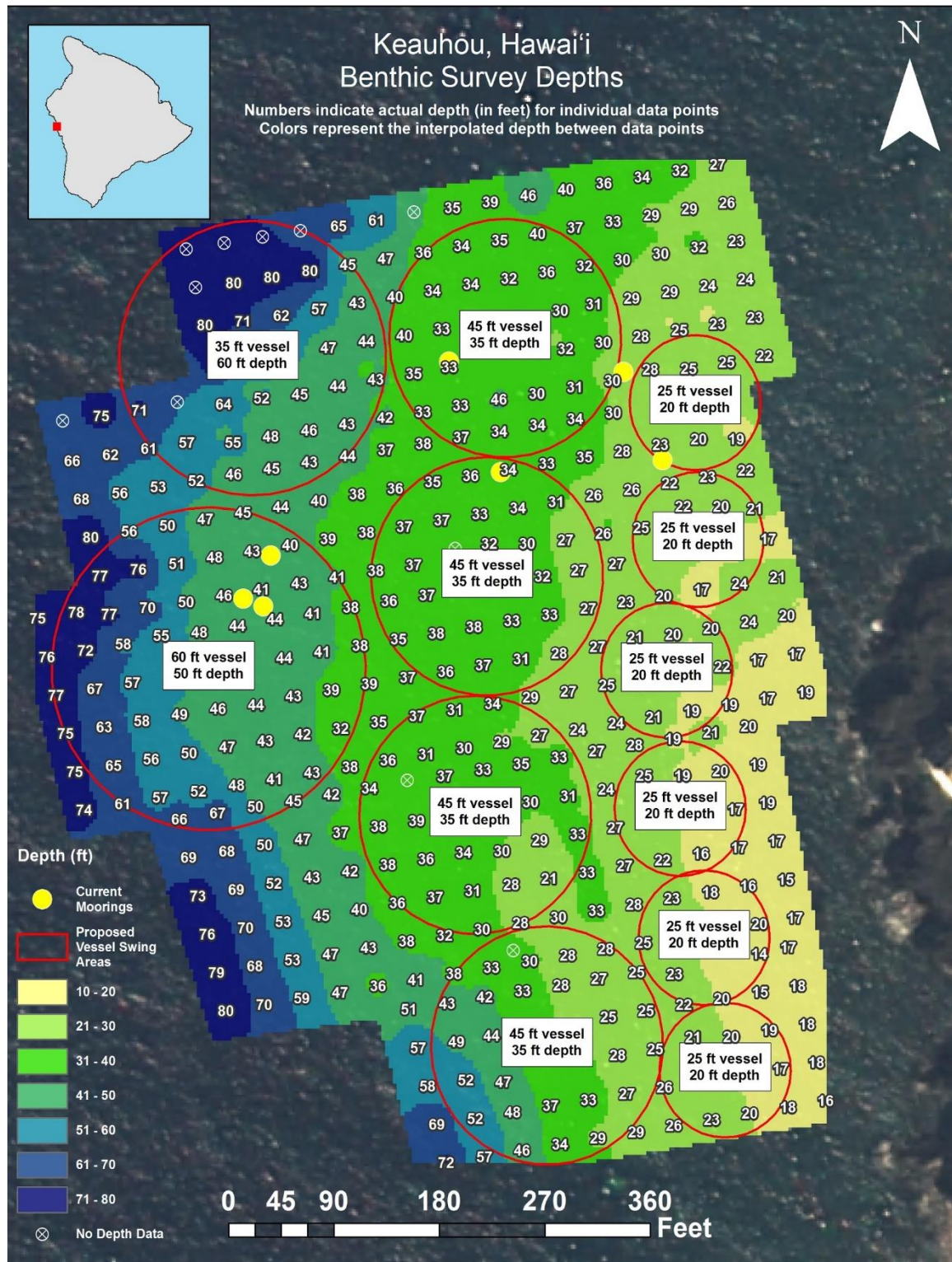
Sheraton Keauhou Shore Waters: 7 commercial, 1 recreational

Makako Bay: 7 commercial, 1 recreational

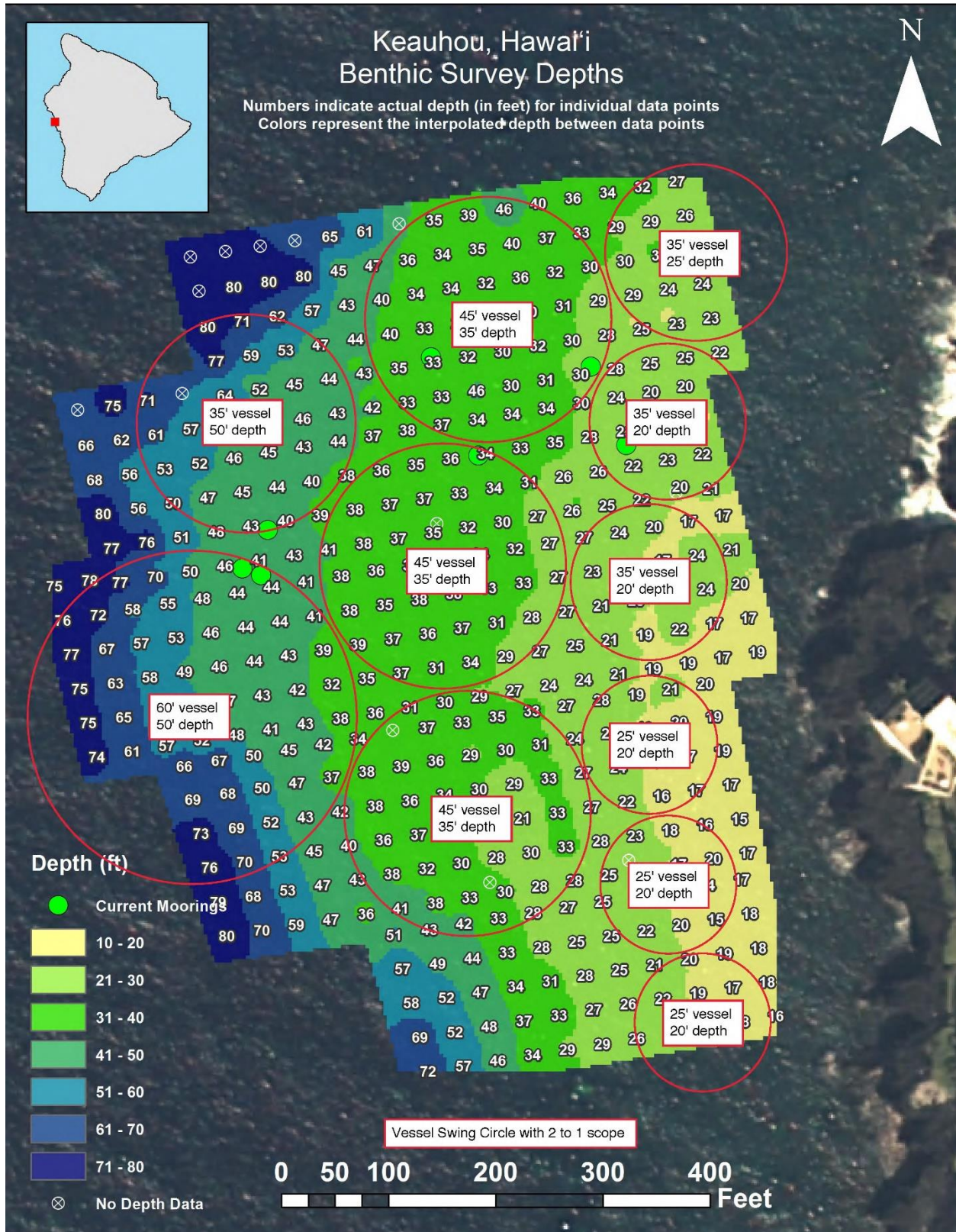
Calculations based on 3:1 scope (line from mooring to vessel is 3 times the water depth).

APPENDIX A – SHERATON KEAUHOU PROPOSED MOORING LAYOUTS

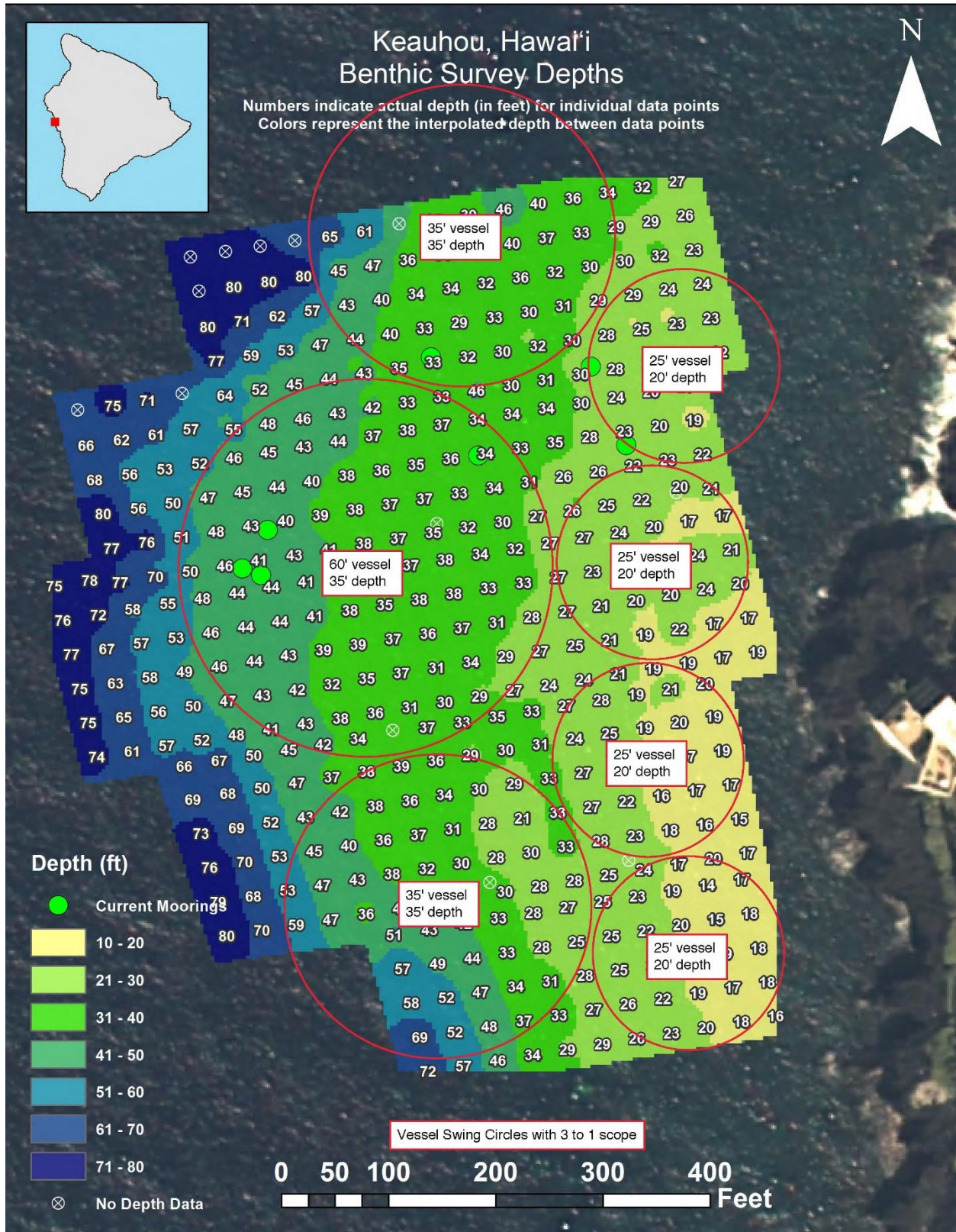
OPTION 1: KEAUHOU - MAXIMUM NUMBER OF MOORINGS (1.5:1 SWING RADIUS)



OPTION 2: KEAUHOU -MID NUMBER OF MOORINGS (2:1 SWING RADIUS)

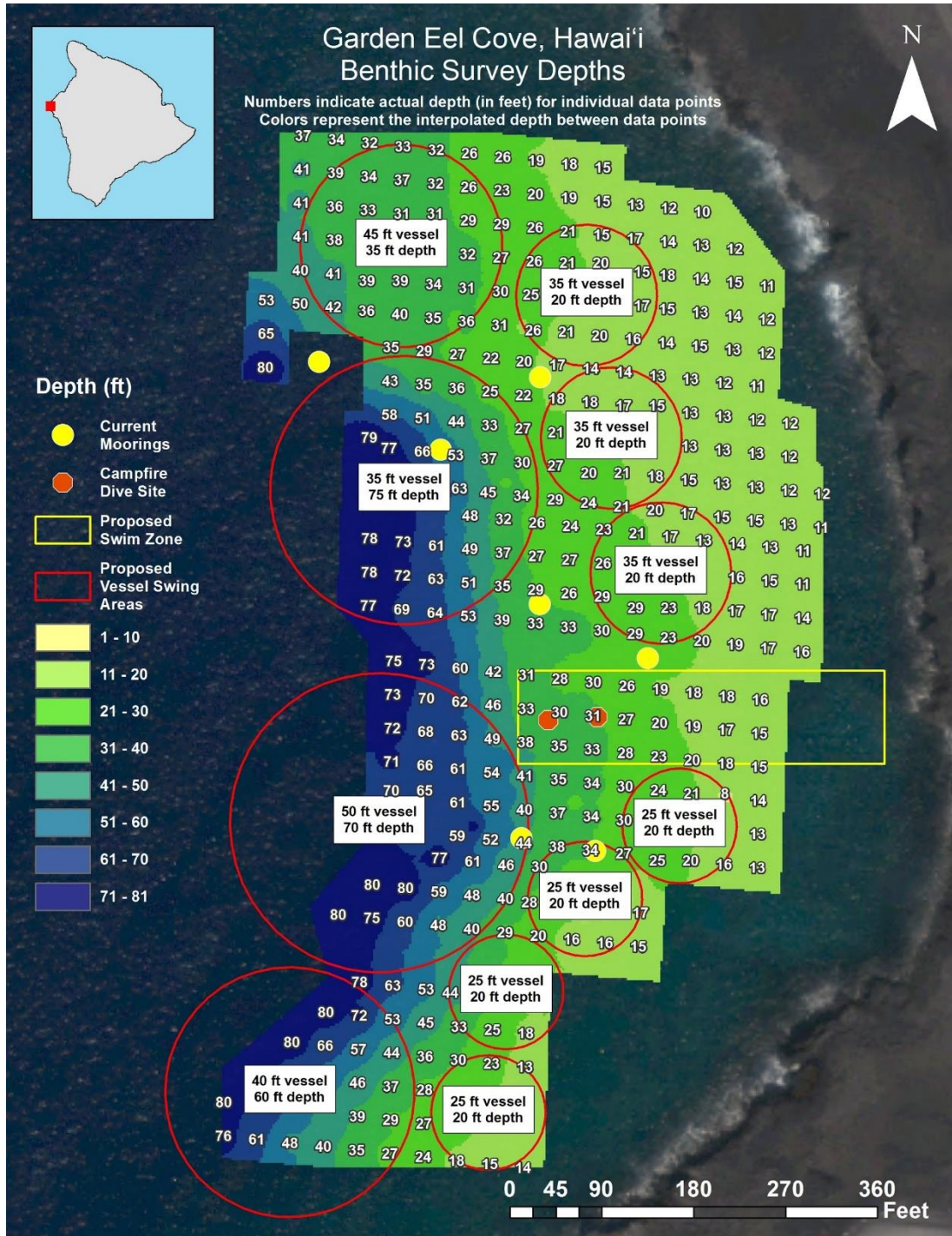


OPTION 3: KEAUHOU-LEAST NUMBER OF MOORINGS (3:1 SWING RADIUS)

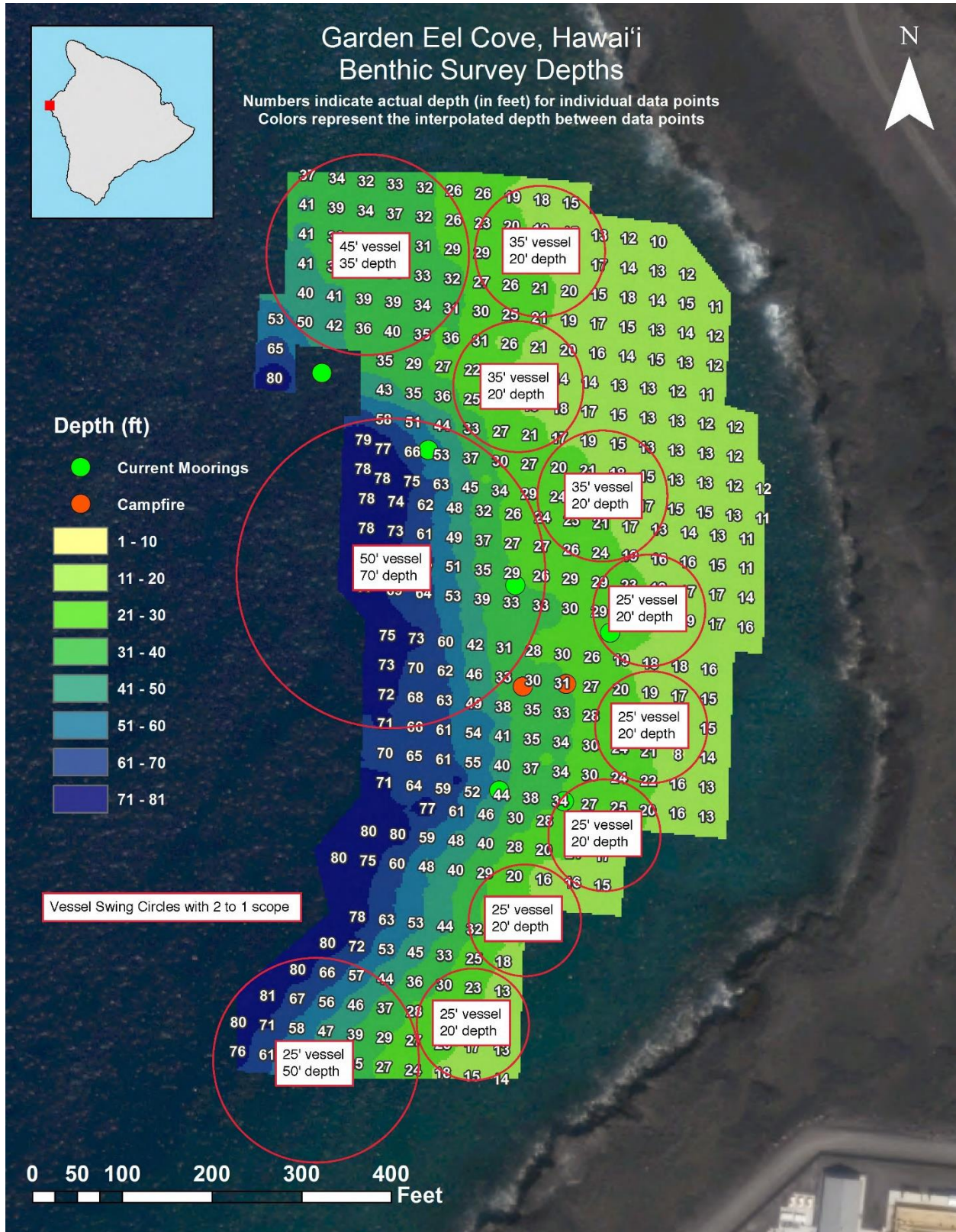


APPENDIX B – MAKAKO BAY PROPOSED MOORING LAYOUTS

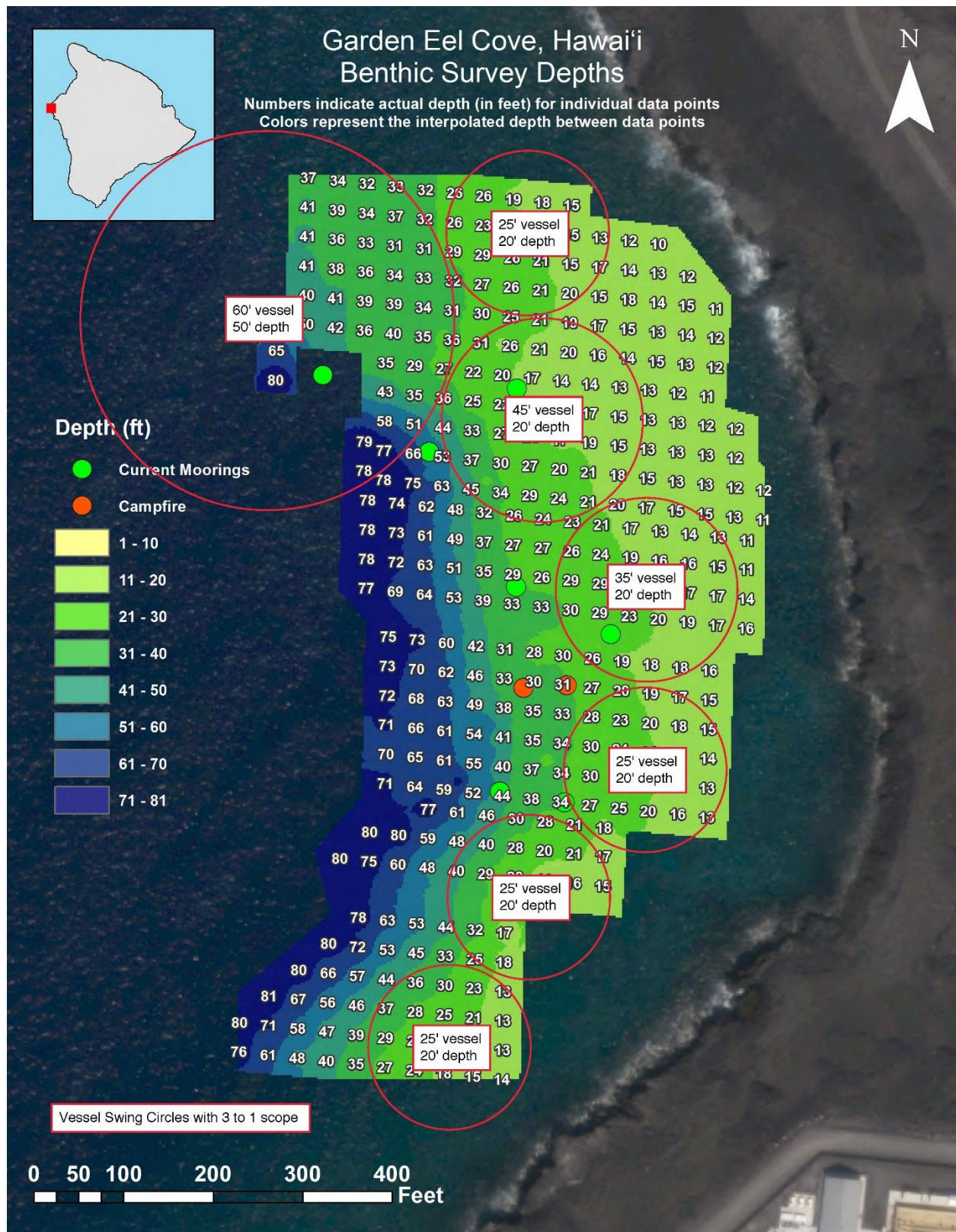
OPTION 1: MAKAKO BAY – MAX NUMBER OF MOORINGS (1.5:1 RADIUS)



OPTION 2: MAKAKO BAY – MID- NUMBER OF MOORINGS (2:1 RADIUS)



OPTION 3: MAKAKO BAY-LEAST NUMBER OF MOORINGS (3:1 SWING RADIUS)



APPENDIX C- DRAFT LIST OF COMMERCIAL OPERATORS AS OF JUNE 2015

Breeze Hawaii	Miss Mojo Sports; Kiholo Inc
Coral Reef Snorkel Adventures	Neptune Charlies Ocean Safaris (Manta Ray Dives)
Dolphin Journeys	Ocean Eco Tours
Fair Wind Cruises	Ocean Encounters
Hang Loose Boat Tours	Ocean Spirit Diving
Hawaii Island and Ocean Tours	Pacific Rim Divers
Hawaii Oceanic	Sandwich Isle Divers
Honu Sports	Sea Paradise
Jack's Diving Locker	Seaquest LTD Hawaii
Kalena Naia LLC	Splashers Ocean Adventures
Kamanu Charters	Sunlight on Water, Golden Dragon
Kona Diving Company	Torpedo Tours
Kona Honu Divers	Wahine Charters
Kona Ocean Adventures	
Kona Sea Adventures	

If you believe you belong on the list of operators potentially eligible to apply for a permit and are not included, please contact DOBOR on or before October 14, 2016 with the following information:

- Company Name
- Vessel Name and HA#/USCG Documentation
- Contact Information (Name, Address, Telephone Number, and email)
- Proof of Commercial Permit for State Ocean Waters from DOBOR
- Justification for being included on the list including:
 - How long you have been conducting manta tours
 - How often you conduct manta tours (weekly, daily, monthly, etc.)
 - 2 separate witness statements from other operators on the list of manta tour operators (with witness name and contact number)

Please note that being on this list does not guarantee issuance of a permit. If the department elects to issue annually renewed permits to tie to a specific mooring during manta hours, they will be offered only to those operators who pass the application process. Renewal will be contingent on compliance with all state, county, and federal laws, regulations, and rules, as well as timely payment of mooring fees.